

United States District Court
Central District of California

ROBERT A. ZIRKIN, an individual,

Case No. 2:18-cv-09207-ODW (SSx)

Plaintiff,

ORDER DENYING MOTION TO REMAND [17]

SHANDY MEDIA, INC., a California Corporation; ANGELA STRUCK, an individual; RAYMOND ATTIPA, an individual; TIGRANOUHI ATTIPA, an individual; and DOES 1 through 100, inclusive.

Defendants.

I. INTRODUCTION

Plaintiff Robert A. Zirkin (“Plaintiff”), citizen and state senator of Maryland, moves to remand this action to the Superior Court of California, County of Los Angeles. (Mot. to Remand (“Mot.”), ECF No. 17.) Defendants oppose the Motion to Remand. (Opp’n to Mot. (“Opp’n”), ECF No. 18.)

For the reasons that follow, Plaintiff's Motion to Remand is **DENIED**.¹

¹ After carefully considering the papers filed in support of and in opposition to the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

II. FACTUAL BACKGROUND

Plaintiff seeks relief under state tort law for harm suffered due to the alleged creation and publication of a defamatory video. (Mot. 3.) Plaintiff alleges Defendants Shandy Media, Inc., Angela Struck, Raymond Attipa, and Tigranouhi Attipa (collectively, “Defendants”) published a Video News Report (“Video”) on its website that falsely portrays Plaintiff seeking prostitutes during a professional football game in Baltimore, Maryland. (*Id.*)

On October 19, 2017, Plaintiff filed a Complaint against Defendants in the Circuit Court for Baltimore County, Maryland (“Maryland Action”). (*Id.*) Defendants, who are domiciled in California, moved to dismiss the Maryland Action because they were not subject to personal jurisdiction in Maryland. (*Id.*) The Circuit Court of Baltimore County granted Defendants’ Motion to Dismiss. (*Id.*) Plaintiff then filed a Motion for Reconsideration, which was denied. (Opp’n 8.)

On October 16, 2018, Plaintiff filed a complaint in the Superior Court for the State of California, County of Los Angeles, alleging two causes of action against Defendants for defamation and false light. (Mot. 2.) On October 26, 2018, before Plaintiff served any Defendant with the summons and Complaint, Defendants removed the case to federal court, maintaining that complete diversity exists and the amount in controversy exceeds \$75,000. (Opp’n 8.)

Plaintiff now moves to remand the case back to the Superior Court of the State of California, County of Los Angeles, under 28 U.S.C. § 1441(b)(2). (*See generally* Mot.) Specifically, Plaintiff maintains that because all four Defendants are California citizens, and the action was originally filed in California state court, 28 U.S.C. § 1441(b)(2) restricts the Defendants' ability to remove this case to federal court. (*Id.*)

III. LEGAL STANDARD

Federal courts are courts of limited jurisdiction, having subject-matter jurisdiction only over matters authorized by the Constitution and Congress. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Under 28 U.S.C. §

1 1441(a), a party may remove a civil action brought in a State court to a district court
2 only if the plaintiff could have originally filed the action in federal court. Thus,
3 removal is only proper if the district court has original jurisdiction over the issues
4 alleged in the state court complaint. There is a strong presumption that the Court is
5 without jurisdiction until affirmatively proven otherwise. *See Fifty Assocs. v.*
6 *Prudential Ins. Co. of America*, 446 F.2d 1187, 1190 (9th Cir. 1970). When an action
7 is removed from state court, the removing party bears the burden of demonstrating
8 that removal is proper. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

9 Under the diversity statute, 28 U.S.C. § 1332, a federal district court has
10 original jurisdiction when the parties are completely diverse and the amount in
11 controversy exceeds \$ 75,000. Pursuant to 28 U.S.C. § 1441(a) and (b), a defendant
12 may remove an action from state court to federal court if the diversity and amount in
13 controversy requirements are satisfied. Under 28 U.S.C. § 1441(b)(2), “[a] civil action
14 otherwise removable solely on the basis of the jurisdiction under section 1332(a) of
15 this title may not be removed if any of the parties in interest properly *joined and*
16 *served* as defendants is a citizen of the State in which such action is brought.” 28
17 U.S.C. § 1441(b)(2)(emphasis added).

18 IV. DISCUSSION

19 The crux of the instant dispute turns on the interpretation of 28 U.S.C. §
20 1441(b)(2). Specifically, the language “properly joined and served” in § 1441(b)(2)
21 (“Forum Defendant Rule”). Although Plaintiff does not assert that the statute is
22 ambiguous, he maintains that the Court should consult extrinsic aids to determine the
23 purpose of the Forum Defendant Rule. (*See Id.*) Conversely, Defendants maintain
24 that because the Forum Defendant Rule is unambiguous, the language “properly
25 joined and served” must be interpreted according to its plain meaning. (*See Opp’n.*)

26 In its Removal Notice, Defendants established diversity jurisdiction which was
27 not challenged by the Plaintiff. Thus, the Court, having analyzed Defendants’
28 jurisdictional claims, finds that complete diversity exists. Accordingly, the Court turns

1 to interpreting the Forum Defendant Rule. As such, the Court will determine whether
2 the Forum Defendant Rule is ambiguous before addressing the absurdity doctrine or
3 turning to extrinsic interpretative aids.

4 **A. The Language of the Forum Defendant Rule is Unambiguous**

5 Determining whether section 1441(b)(2) applies here is primarily an exercise in
6 statutory interpretation. The starting point for any question of statutory interpretation
7 is the statutory text. *Los Angeles Lakers, Inc. v. Federal Insurance Co.*, 869 F.3d 795,
8 802 (9th Cir. 2017) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). Principles of
9 statutory construction direct courts to seek a statute's meaning "in the language in
10 which the act is framed, and if that is plain, and if the law is ... [constitutional], the
11 sole function of the courts is to enforce it according to its terms." *Caminetti v. United
12 States*, 242 U.S. 470, 485 (1917) (citations omitted).

13 For the Forum Defendant Rule to bar removal, two distinct obligations are
14 imposed upon a plaintiff—to properly join, and to properly serve any in-state
15 defendant. (*Id.*) These obligations are combined by the conjunctive term "and" in the
16 language "properly joined *and* served." This statutory construction indicates that the
17 Forum Defendant Rule only attaches if a plaintiff properly joins and properly serves at
18 least one in-state defendant. This clear language is not open to multiple
19 interpretations.

20 Neither the Ninth Circuit nor the Supreme Court have directly spoken on the
21 propriety of pre-service removal and the Forum Defendant Rule. However, in
22 *Encompass Ins. Co. v. Stone Mansion Rest. Inc.*, the Third Circuit held that the Forum
23 Defendant Rule was unambiguous, as it simply "precludes removal on the basis of in-
24 state citizenship only when [a] defendant has been properly joined and served." 902
25 F.3d 147, 152 (3rd Cir. 2018).

26 District courts within the Ninth Circuit are split on the instant issue. *Regal
27 Stone Ltd. v. Longs Drug Stores Cal., L.L.C.*, 881 F. Supp. 2d 1123, 1128 (N.D. Cal.
28 2012). However, "courts on either side of the split have assumed that the removal

1 statutes are clear and unambiguous.” *Id.* A Court from our sister northern district
2 recently addressed the Forum Defendant Rule after *Stone Mansion*, and found the
3 Third Circuit’s reasoning persuasive and concluded that the Forum Defendant Rule
4 does not bar an in-state defendant from removing an action before the defendant is
5 served. *See Monfort v. Adomani*, No. 18-CV-05211-LHK, 2019 WL 131842, at *3.
6 (N.D. Cal. Jan. 8, 2019). The Court agrees. However, any plain meaning
7 interpretation of an unambiguous statute that leads to an absurd result must be
8 avoided. *Arizona St. Bd. for Charter Schs. v. U.S. Dep’t of Educ.*, 464 F.3d 1003,
9 1008 (9th Circ. 2006). Accordingly, the Court must determine whether a plain
10 meaning interpretation of the Forum Defendant Rule produces an absurd result.

11 **B. The Absurdity Doctrine**

12 A court’s decision to employ a plain meaning interpretation is tempered by the
13 absurdity doctrine. *Lamie*, 540 U.S. at 534 (2004). The absurdity doctrine requires
14 that Courts must “avoid natural readings that would lead to irrational results.”
15 *Arizona St. Bd.*, 464 F.3d at 1008. However, “[w]hen a natural reading of the statute[]
16 leads to a rational, common-sense result, an alteration of meaning is not only
17 unnecessary, but also extrajudicial.” *Id.*

18 As the Third Circuit explained, a plain meaning interpretation of the language
19 “properly joined and served” in the Forum Defendant Rule “envisions a broader right
20 of removal only in the narrow circumstances where a defendant is aware of an action
21 prior to service of process with sufficient time to initiate removal.” *Stone Mansion*,
22 902 F.3d at 153. Although the Court recognizes that such an interpretation may lead
23 to absurd results in certain circumstances, absurdity is avoided here because
24 Defendants’ conduct is not tantamount to gamesmanship, and Plaintiff was not
25 deprived of a meaningful opportunity to serve Defendants.

26 Plaintiff’s principle case, *Vallejo v. Amgen, Inc.*, demonstrates an instance
27 where it would be absurd to interpret the Forum Defendant Rule according to its plain
28 meaning. No. CV 13-03666-BRO (MANx), 2013 WL 12147584 (C.D. Cal. Aug. 30,

1 2013). In *Vallejo*, the plaintiff could not possibly serve the defendant prior to removal
2 because the court withheld the summons from the plaintiff until after the defendant
3 removed the case. *Id.* at *3. The *Vallejo* court did not attempt to fashion a bright-line
4 rule requiring remand in cases of pre-service removal. Rather, the *Vallejo* court held
5 that the Forum Defendant Rule should be interpreted to allow a plaintiff at least *some*
6 *opportunity* to serve a defendant. *Id.*; (*See also* Mot. at 4-5.) *Vallejo* bears striking
7 similarity to other cases before the central district—the Forum Defendant Rule lacks
8 ambiguity, but literal application of the rule would produce an absurd result. *See*
9 *Standing v. Watson Pharmaceuticals, Inc.*, No. CV 09-0527-DOC (ANx), 2009 WL
10 842211 (C. D. Cal. Mar. 26, 2009)(granting motion to remand where unserved
11 defendant removed one day after complaint was filed.).

12 The instant case, however, is factually distinguishable. Here, Defendants
13 removed the case ten days after Plaintiff filed the case in state court, and six days after
14 Plaintiff received summons from that court. (Mot. 2-3.) Thus, Plaintiff had sufficient
15 time to serve Defendants. Moreover, because this case is a subsequent action of the
16 Maryland Action, Plaintiff knew the identities of Defendants and their counsel, and
17 where to serve them. (Decl. of Jay Ward Brown ¶ 4, ECF No. 18.)

18 While it is clear that courts in this district have found that permitting pre-service
19 removal absurd, others have not, concluding that “the plain language of [Section
20 1441(b)(2)] states that it only applies when the local defendants have been ‘properly
21 joined and served.’” *Timmons v. Linvatec Corp.*, No. CV 09-07947 R (SSx), 2010 WL
22 2402924, at *1 (C.D. Cal. Mar. 9, 2010); *see also Cucci v. Edwards*, 510 F. Supp. 2d
23 479, 483 (C.D. Cal. 2007) (concluding that the forum defendant rule “did not apply”
24 because “service could not have been complete” on the in-state defendant until after
25 removal); *Wilder v. Bank of Am., N.A.*, No. CV 14-00670-MMM (CWx), 2014 WL
26 12591934, at *4 (C.D. Cal. June 30, 2014)(holding that the forum defendant rule is
27 “inapplicable if the removal is effected by an out-of-state defendant before any local
28 defendant is served.”). Finally, and arguably most importantly—a Plaintiff in this very

1 district, in a similar removal action unsuccessfully invoked *Vallejo* to support remand.
2 *Dechow v. Gilead Sciences, Inc.*, No. CV 18-09362-AB (GJSx), 2019 WL 517624
3 (C.D. Cal. Feb. 8, 2019).

4 In sum, it is clear that reasonable minds differ on whether a plain meaning
5 interpretation of the Forum Defendant Rule produces absurd results. While *Vallejo* is
6 factually distinguishable, it is persuasive to the extent that literal application of the
7 Forum Defendant Rule that precludes the opportunity to serve an opposing party
8 cannot stand. Given that the facts in the instant case do not represent such a
9 circumstance, the Court is unwilling to effectively erase language from a statute by
10 ignoring the language “and served” in the Forum Defendant Rule and tread
11 dangerously into legislative province. It is the role of Congress, not the Courts, to
12 rewrite a statute. *Xi v. INS*, 298 F.3d 832, 839 (9th Cir. 2002).

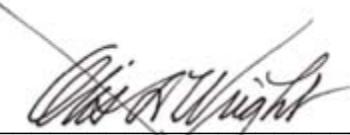
13 Accordingly, the text of the Forum Defendant Rule is unambiguous and does
14 not produce an absurd result.

15 **V. CONCLUSION**

16 For the foregoing reasons, Plaintiff’s Motion to Remand is **DENIED**.

18 **IT IS SO ORDERED.**

20 February 14, 2019

22 
23 **OTIS D. WRIGHT, II**
24 **UNITED STATES DISTRICT JUDGE**